IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 496 OF 1993

Champabai J. Gorad & Ors. ..Petitioners

versus

Popat Mahadeo Khole ..Respondent

Mr. V. S. Gokhale for the Petitioner.
None for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 22ND SEPTEMBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioners. Nobody is present for the Respondent.

2. The petitioner is a landlord. He had filed a suit against the tenant in respect of his house on four grounds, viz. habitual default in payment of rent, bonafide occupation, nuisance and annoyance and that the tenant has committed act injurious to the suit premises. This suit was resisted by the tenant on all the grounds. However, the trial court decreed the suit of the plaintiff on the ground of doing acts injurious to the premises. Thereafter,

tenant preferred appeal against that and the appeal was allowed. The finding of the trial court in this regard was set aside and the suit of the plaintiff was dismissed, and, therefore, this petition.

3. Counsel for the petitioners contended that the plaintiff has succeeded in proving that the defendant has done acts which are injurious to the premises, and, therefore, the trial court had rightly granted the decree which was set aside by the appellate court on misappreciation of facts and perversity. So far as this aspect of the matter is concerned, it was the case of the plaintiffs that the defendant who was occupying suit premises and attic of the suit premises was apart from doing other things was working as a vendor of crackers and he was storing crackers and all inflammable material in the attic. This should not have been done by the defendant as the premises were given to him only for residence but deliberately the defendant caused the fire to break on the night of 14.11.1984 between 9 to 9.30 p.m. Police and fire brigade had come on the spot. They made panchnama and in the fire the plaintiffs suffered loss of Rs.28,000/-. The plaintiff was old at that time, he received a mental

shock.

4. In order to prove this fact, the plaintiff has examined himself and apart from all the things he strongly relied upon the notice given by him to the defendant. This notice is there on record. It is notice dated 20.11.1984. It was sent by registered post to the defendant. Copy of the notice is on record Exhibit 49, acknowledgement Exhibit 50. In that notice all the particulars about fire, and storing of crackers and business of crackers of the defendant is given. Defendant has received this notice but in the plaint itself in paragraph 4 the plaintiff has stated that even though the defendant received this notice on or about 27.11.1984 neither he gave any reply nor complied with the requirements of the said notice. The written statement is filed by the defendant. About this the defendant in his written statement has stated on internal page 5 of the written statement "Plaintiff has unnecessarily sent a notice to the defendant, therefore the defendant was not liable to pay the expenses of the said notice." In civil proceedings pleadings of the parties and their suit notice play a vital and important role because

that depicts the state of affairs before filing of the suit. When the plaintiff gave detailed notice to the defendant making several allegations regarding use and storing the fire crackers in the suit premises, regarding the business of the defendant of sale of fire crackers and regarding the cause of the fire and consequent loss and damages caused to the plaintiff, it was necessary and obligatory upon the defendant to give a reply to the said notice to refute the allegations if at all they were false. Not giving reply to the said notice and not giving any satisfactory explanation, is a strong circumstance against the defendant.

5. The fact that there was a fire to the house in possession of the defendant on the date and time as alleged by the plaintiff is admitted by the defendant. But according to him it was the plaintiff who caused the fire. Now it is impossible to believe that the owner of the property would set his own property to fire. It may be that defendant would also not set it to fire but the fact remains that the fire was caused due to storing of crackers because it has come in the evidence that there is no direct access to the attic floor, therefore it was

not in consistent and continuous use. It could have access only by using the ladder. In the circumstances, the trial court after scrutiny of all the evidence was justified in decreeing the suit of the plaintiff on the said ground. The appellate court has not taken this aspect into consideration at all and has come to a wrong and perverse conclusion, therefore, this petition is required to be allowed.

6. The petition is allowed. Impugned order of the appellate court dated 30.4.1992 passed by the IInd Additional District Judge, Pune in Appeal No. 232 of 1992 is set aside and that of the trial court is maintained and upheld. Rule made absolute in the above terms. The Respondent will bear the cost of this petition.

(D.G. DESHPANDE, J.)